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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/714,950	11/18/2003	Miyuki Fukasawa	080542-0163	9191
22428 7590 01/04/2007 FOLEY AND LARDNER LLP SUITE 500 3000 K STREET NW WASHINGTON, DC 20007			EXAMINER TRAN, SUSAN T	
			ART UNIT	PAPER NUMBER
			1615	
SHORTENED STATUTORY PERIOD OF RESPONSE		MAIL DATE	DELIVERY MODE	
3 MONTHS		01/04/2007	PAPER	

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary	Application No. 10/714,950	Applicant(s) FUKASAWA ET AL.	
	Examiner Susan T. Tran	Art Unit 1615	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-9 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-9 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>04/22/04</u> . | 6) <input type="checkbox"/> Other: ____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-9 are rejected under 35 U.S.C. 102(b) as being anticipated by Zgoulli et al. US 5,456,985, and Matsukawa et al. US 3,660,304.

Zgoulli discloses a microcapsule shell composition comprising at least one gastro-resistant polymer in admixture with one or more non-gastro-resistant polymer (abstract; column 2, lines 29-50). Gastro-resistant polymer includes hydroxypropylmethyl cellulose phathlate (HPMCP) (column 3, lines 36-38). Non-gastro-resistant polymer includes gum arabic (column 4, lines 60-62). The microcapsule is useful for the encapsulation of a wide range of oils including food oils, and pharmaceutical oils such as peanut oil, fish oil, vitamins, and the like (column 5, lines 15-53). Zgoulli also discloses the claimed process (column 2, lines 44 through column 3, lines 1-11; and column 4, lines 67 through column 5, lines 1-6).

It is noted that Zgoulli does not explicitly teach the boiling point of the oily liquid core. However, such limitation is inherent because it is well known in the art that most oils have boiling point of 100°C or higher. See for example, fish oil has boiling point of at least 150°C (Matsukawa et al. US 3,660,304).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Grisoni WO 02/24319 (US equivalent 7,067,153), in view of Iwasaki et al. US 4,349,454 or Maeda et al. US 5,700,397.

Grisoni teaches a microcapsule composition comprising hydrophilic polymer including HPMCP, and an oil component (column 3, lines 50-51 and 60-62). Grisoni further discloses the claimed process (abstract; and column 2, lines 50 through column 3, lines 1-36). The microcapsule is suitable for the encapsulation of cosmetic oils, vitamins, and the like (column 4, lines 52-59).

Grisoni does not explicitly teach gum arabic in the capsule composition.

Iwasaki teaches the use of gum arabic as a hydrophilic protective colloidal material in a microcapsule shell composition (abstract; and column 6, lines 35-52). Maeda teaches the use of polymer emulsifier includes gum Arabic in a microcapsule composition (abstract; and column 1, lines 27-47). Thus, it would have been obvious to one of ordinary skill in the art to modify the microcapsule composition of Grisoni using gum arabic as an oil component in view of the teachings of Iwasaki or Maeda, because Iwasaki and Maeda teach the use of gum arabic in capsule shell composition to obtain

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an improve stability composition, and because Grison teaches the incorporation of an oil component (emulsifier) in a capsule shell composition.

Pertinent Arts

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Samejima et al. is cited as of interest for the teaching of an enteric microcapsule composition.

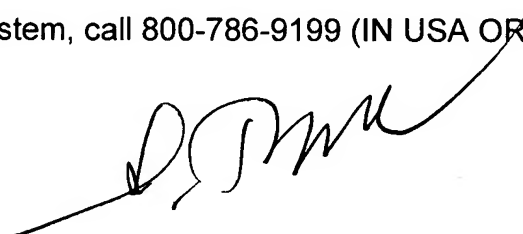
Correspondence

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Susan T. Tran whose telephone number is (571) 272-0606. The examiner can normally be reached on M-F 6:00 am to 4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Woodward can be reached on (571) 272-8373. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



S. Tran
Primary Examiner
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